



DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

[Docket No. FWS-R1-ES-2020-0101; FXES11140100000-223-FF01E0000]

Record of Decision for the Final Environmental Impact Statement and Habitat Conservation Plan for Thurston County, Washington

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of availability; record of decision and habitat conservation plan.

SUMMARY: We, the U.S. Fish and Wildlife Service (Service), announce the availability of a record of decision (ROD) for the issuance of a permit under section 10(a)(1)(B) of the Endangered Species Act (ESA) for the Thurston County habitat conservation plan (HCP). The ROD documents the Service's decision to issue an incidental take permit (ITP) to the Thurston County Community Planning and Economic Development Department (Thurston County, County, or applicant) in response to their permit application. As summarized in the ROD, the Service has selected the proposed action alternative, which includes implementation of the HCP and issuance of a 30-year ITP authorizing incidental take from covered activities of four threatened species and one endangered species listed under the ESA, and one non-listed species.

ADDRESSES: You may obtain copies of the ROD and other documents associated with the decision by any of the following methods:

- Internet: <https://www.regulations.gov> in Docket No. FWS-R1-ES-2020-0101, or at <https://www.fws.gov/office/washington-fish-and-wildlife>.
- Upon Request: You may request alternative formats of the documents directly from the Service (see **FOR FURTHER INFORMATION CONTACT**).

FOR FURTHER INFORMATION CONTACT: Kevin Connally, U.S. Fish and Wildlife Service, Washington Fish and Wildlife Office, by telephone at 360-753-9440 or

by email at Kevin_Connally@fws.gov. Individuals in the United States who are deaf, deafblind, hard of hearing, or have a speech disability may dial 711 (TTY, TDD, or TeleBraille) to access telecommunications relay services. Individuals outside the United States should use the relay services offered within their country to make international calls to the point-of-contact in the United States.

SUPPLEMENTARY INFORMATION: We, the U.S. Fish and Wildlife Service (Service), announce the availability of a record of decision (ROD) for the issuance of an Endangered Species Act (ESA) section 10(a)(1)(B) incidental take permit (ITP) to the Thurston County Community Planning and Economic Development Department (Thurston County, County, or applicant) in Thurston County, Washington. The ROD documents the Service's decision to issue an ITP to the applicant. As summarized in the ROD, the Service has selected the agency-preferred alternative (also described as the proposed action below), which includes implementation of a habitat conservation plan (HCP) and issuance of a 30-year ITP authorizing incidental take of the threatened Yelm pocket gopher (*Thomomys mazama yelmensis*), Olympia pocket gopher (*T. mazama pugetensis*), Tenino pocket gopher (*T. mazama tumuli*), and Oregon spotted frog (*Rana pretiosa*); the endangered Taylor's checkerspot butterfly (*Euphydryas editha taylori*); and the Oregon vesper sparrow (*Pooecetes gramineus affinis*), which is under review to determine if Federal listing under the ESA is warranted.

We are advising the public of the availability of the ROD, developed in compliance with agency decision-making requirements of the National Environmental Policy Act of 1969, as amended (NEPA). The Service published a notice of availability (NOA) for the draft environmental impact statement (EIS) in the **Federal Register** on September 24, 2021 (86 FR 53111), and we published an NOA for the final EIS on May 13, 2022 (87 FR 29361). All alternatives were described in detail, evaluated, and analyzed in the draft and final EIS.

In 2020, the Council on Environmental Quality (CEQ) issued a final rule updating the NEPA implementing regulations (the “2020 rule”; 85 FR 43304, July 16, 2020). The 2020 rule went into effect on September 14, 2020, and it applied to any NEPA process begun after that date. Because the Service published a notice of intent (NOI) to develop an EIS for this project on October 16, 2020 (85 FR 65861), the DEIS and FEIS were prepared according to the 2020 rule. On April 20, 2022, CEQ published a final rule that modified the 2020 rule, including reinstating the definition of cumulative effects (the “2022 rule”; 87 FR 23453). The 2022 rule went into effect on May 20, 2022. While terminology used in the EIS is based on the 2020 rule, the analysis in the EIS is consistent with both the 2020 and 2022 rules; the purpose and goals of NEPA; longstanding Federal judicial and regulatory interpretations; the Department of the Interior’s NEPA regulations (43 CFR part 46); and Administration priorities and policies, including Secretary’s Order No. 3399, requiring use of “the same application or level of NEPA that would have been applied to a proposed action before the 2020 rule went into effect.”

Background

Thurston County applied for an ITP to cover a variety of activities for which the County issues permits or approvals, or activities the County otherwise carries out under its jurisdiction, as detailed in the HCP. The covered activities are described further in the final EIS and in the HCP. The covered activities include:

- Residential development;
- Development of accessory structures;
- Installation, repair, or alteration of septic systems;
- Commercial and industrial development;
- Public service facility construction;
- Transportation projects;

- Transportation maintenance and other work within County-owned road rights-of-way;
- Landfill and solid waste management;
- Water resources management;
- Management of conservation lands; and
- County parks, trails, and land management.

Through implementation of the HCP, the County will permit or conduct covered activities that incidentally take covered species. The HCP includes an analysis of projected impacts to covered species and measures to avoid, minimize, and mitigate the impacts. Where take is unavoidable, the County will permanently conserve lands in accordance with HCP requirements (“conservation lands”) to fully offset impacts of the taking on covered species before permits are issued or covered activities are conducted. Conservation lands will be monitored and adaptively managed to ensure they meet HCP-specified performance standards. Avoidance, minimization, and mitigation measures are discussed in greater detail below.

It is not practical to analyze anticipated take of individuals of each species; therefore, the HCP uses habitat, measured as habitat area or as “functional-acre” values, as a surrogate for quantifying impacts and mitigation for each covered species. The functional-acre approach weights habitat acreage with values for the covered species’ distribution, habitat condition, and landscape context. This approach provides greater weight to both impacts and mitigation occurring in or near areas that are a priority for conservation of the covered species.

Development and maintenance activities covered by the HCP will impact *Mazama* pocket gopher subspecies when the activities occur within habitat in the ranges of the covered species. Fewer HCP-covered development and maintenance activities will impact the Oregon spotted frog, the Taylor’s checkerspot butterfly, and the Oregon

vesper sparrow, because they have relatively localized ranges in Thurston County and thus are less likely to be impacted by covered activities.

Measures to avoid and minimize impacts of the taking on covered species include avoiding habitat where feasible, reducing the extent of habitat impacts through within-site project design, and additional species-specific measures for each group of covered activities, as described in the HCP. These measures are detailed in Appendix C of the HCP, including standard practices to avoid and minimize impacts on prairie species and prairie habitats, as well as on the Oregon spotted frog and its habitat, when siting and locating activities as well as during construction. Appendix C of the HCP also details enhanced measures recommended as best practices for land managers who voluntarily maintain habitat functions for the covered species.

To mitigate for unavoidable impacts to covered species, Thurston County proposes to permanently protect, restore or enhance where appropriate, and manage habitat occupied by covered species on conservation lands. Conservation lands include newly acquired permanent habitat reserves; working agricultural lands; and existing reserves where the County will enhance and permanently maintain habitat quality. The addition of conservation lands to the HCP conservation lands network will occur incrementally during HCP implementation at a pace that meets or exceeds the pace of impacts to each covered species.

The HCP includes funding assurances, monitoring, an adaptive management process, and changed circumstance provisions to help ensure that the conservation program achieves the biological goals for the covered species. Annual reports will confirm the amount, type, and location of impacts and mitigation, as well as the status of monitoring, adaptive management, changed circumstances, and funding. The conservation program and expected effects of HCP implementation on the covered species and their habitats are described in greater detail in the HCP and in the FEIS. The

HCP is expected to be implemented for 30 years, and the resulting conservation lands will be permanently maintained.

Anticipated Permits and Authorizations

In addition to the ITP, Thurston County will manage covered activities to comply with all other applicable laws, including, without limitation, Washington State endangered and protected species regulations; the Washington State Growth Management Act, which includes State and local protection of historic and cultural resources implemented through the County's comprehensive plan; the Washington State Shoreline Management Act; the Washington State Hydraulic Code; Thurston County Critical Area Ordinances; State and local requirements for administrative procedures; and other regulations. Individual projects conducted under the HCP will undergo individual review by the County for compliance with local codes and further public review, as appropriate, through the Washington State Environmental Policy Act.

Purpose and Need

As described in the final EIS, the Service's purpose and need for the Federal action is to process the County's request for an ITP, the issuance of which is necessary to meet the County's development and biological goals, and to inform the Service's decision to grant, grant with conditions, or deny the ITP request in compliance with the Service's authority under applicable law, including, without limitation, section 10(a)(1)(B) of the ESA and applicable ESA implementing regulations. Section 10(a)(1)(B) of the ESA includes conservation authorities and obligations that require us to respond to the ITP application submitted by the applicant.

Alternatives

In compliance with NEPA (42 U.S.C 4321 *et seq.*), the Service prepared a final EIS analyzing the proposed action (identified as the preferred alternative), a no-action alternative, and one alternative to the proposed action. Summaries of each alternative are

presented below. The environmental consequences of each alternative were analyzed to determine if significant impacts to the human environment would occur. Public comments received in response to the draft EIS were considered, and the final EIS responds to comments and includes some clarifications that address public comments. The final EIS did not identify an environmentally preferable alternative. Pursuant to NEPA implementing regulations found at 40 CFR 1505.2, the Service identified the proposed action as the environmentally preferable alternative in the ROD, because the network of conservation lands would be slightly larger and more diverse than in the modified HCP alternative action, resulting in greater conservation benefit to the covered species.

No-Action Alternative: The Service would not issue incidental take authorization to the County, and the County would not implement the HCP. The County would continue to conduct, permit, and approve activities on a case-by-case basis in compliance with Federal, State, and local requirements, including the Thurston County Critical Areas code. The County and individual project proponents would continue to evaluate each project to ensure unauthorized take of listed species is avoided. The County would not implement a coordinated, County-wide conservation program for ESA-listed species. This alternative is the current situation in Thurston County.

Proposed Action Alternative: The Service would, in accordance with applicable law, issue the requested ITP to Thurston County for the incidental take of covered species by the covered activities. The County would implement the Thurston County HCP and its conservation program, including, without limitation, implementation of measures to minimize effects of covered activities, mitigation measures to fully offset the impacts of the taking on covered species, and monitoring and reporting. The County would also ensure funding for HCP implementation. Under the proposed action, the County would mitigate for the impacts of the taking on covered species, in part through the execution of

conservation easements on working agricultural lands, the enhancement of existing conservation reserves, and the establishment and management of new conservation reserves. The proposed action is the Service's agency-preferred alternative because it provides a practical approach for durable conservation outcomes in the permit area while supporting the County's goals and community interests, such as preservation of agricultural lands.

Modified HCP Alternative Action: The Service would, in accordance with applicable law, issue an ITP to Thurston County with the same permit area, permit term, covered species, covered activities, and many of the HCP elements described for the proposed action. Under this alternative, the County would mitigate for the impacts of the taking on covered species solely through the establishment and management of new conservation reserves. The County would not execute conservation easements on working agricultural lands, or include the enhancement of existing conservation reserves in the mitigation strategy. Under this alternative, the network of conservation lands would be slightly smaller.

Decision and Rationale for Decision

We have made the determination that the applicant's proposed HCP, as modified by the terms and conditions of the ITP, would meet the statutory ITP issuance criteria set forth in section 10(1)(2)(B) (16 U.S.C. 1539(a)(2)(B)). Our assessment of the application was conducted in accordance with the requirements of section 10(a)(1)(B) of the ESA and its implementing regulations. Based on our review of the alternatives and their environmental consequences as described in the final EIS, we selected the proposed action because implementation of the final HCP and issuance of the ITP best fulfills the Service's statutory mission and responsibilities while meeting our purpose and need. This decision is described further in the ROD.

Authority

We provide this notice in accordance with the requirements of NEPA (42 U.S.C. 4321 *et seq.*) and its implementing regulations (40 CFR 1506.6).

Nanette Seto,

Acting Deputy Regional Director,

Pacific Region 1,

U.S. Fish and Wildlife Service.

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